IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 4671 OF 1991

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

---

1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

HEIR OF RAVJIBHAI S PATEL SHANTIBEN WS/O RAVJI SOMA
VERSUS
VALSAD TALUKA PATEL SAMAJ PRAGATI MANDAL

Appearance:
MR RA PATEL for the Petitioner
MR SUNIL C PATEL for the Respondent No.1

CORAM : MR JUSTICE S.K.KESHOTE
Date of Order : 21/03/2001

C A V JUDGMENT

#. The learned counsel for the petitioner prays for short adjournment for filing rejoinder to the reply

affidavit filed by the respondent. On 15.12.2000 when this matter has come up for hearing the learned counsel for the respondents raised a preliminary objection re. maintainability of the petition. It is contended that this petition deserves to be dismissed on the ground that the petitioner concealed and suppressed material fact from this court. The learned counsel for the petitioner prayed for adjournment of the matter to explain the position. Time prayed for was granted and more than one month time was granted to the counsel for the petitioner to explain the position. In the order dated 15.12.2000 in the last part thereof by typographic error for petitioner, respondent is mentioned. As more than one months' time has been granted to the learned counsel for the petitioner for this purpose no further adjournment needs to be given.

#. In the facts of this case I do not find any justification in the prayer made by the learned counsel for the petitioner for the adjournment of the matter. It is a Special Civil Application of the year 1991 i.e. a old matter. Old matters are being given priority by the court in hearing and in case the matters are adjourned on the convenience of the advocates it will be very difficult for the court to decide the old matters. More than sufficient time was granted to the petitioner to explain the position and prayer made for further time deserves no acceptance.

#. In this petition the petitioner challenges the order of the Gujarat Revenue Tribunal in Revision Application No.TEN.B.S.132/88 dated 11.1.1990. This revision application before the Tribunal has been filed by the respondent and which came to be allowed under the impugned order and the order of the Deputy Collector in Tenancy Appeal No.585 of 1985 dated 1.1.1988 was set aside and the order of the Mamlatdar and ALT dated 19.5.1985 in Tenancy Case No.17-B/7128/84 was restored and confirmed.

#. Briefly stated the facts of the case as emerges from the petition are that father of the petitioner was an agricultural labourer and had constructed a hutment in survey No.590/1/3 paiki and 587/1 paiki in respect of 80 sq. mtr. of agricultural land situated in sim of village Bhagavada, Dist. Valsad since 1947/48. The petitioner states and submits that Mamlatdar and ALT, Valsad has not started proceedings under Section 17B of the Bombay Tenancy and Agricultural Land Act, 1948. The father of the petitioner filed an application under Section 17B of the Act aforesaid before Mamlatdar-ALT

Valsad on 1.4.1984. This application was came to be rejected by the Mamlatdar and ALT Valsad under its order dated 19.5.1985. Against this order, the petitioner preferred Tenancy appeal before the Deputy Collector of Valsad and it was allowed under the order dated 1.1.1988 This order of the Deputy Collector, Valsad was taken up in the revision before the Gujarat Revenue Tribunal at Ahmedabad by the respondent and that revision application has been allowed on 16.1.1980. Hence this Special Civil Application.

#. Reply to the Special Civil Application has been filed by respondent and therein a preliminary objection has been raised that the petition is not maintainable since the petitioner has suppressed material from the court. It is stated that in case correct facts would have been brought before the court this court would not have admitted the petition and protected the petitioner by grant of interim relief. It is stated that on the very same subject matter the respondent has filed a civil suit against the petitioner for taking up the possession and mesne profit of the land in dispute being Regular Civil Suit No.22 of 1991 in the court of Joint Civil Judge (J.D.), Valsad on 4.3.1991. After service of the summons the petitioner put appearance through the advocate therein and filed an application seeking time to file written statements which was granted and the matter was adjourned to 19.6.1991. On 19.6.1991 the advocate for the petitioner was absent. Even thereafter neither the petitioner nor her advocate appeared before the Trial Court nor she has raised any objections in the suit. Ultimately the suit was came to be decreed on 18.2.1992. Against the judgment and decree of the Trial Court the petitioner has not filed any appeal meaning thereby the judgment and decree of the trial court has attained finality.

#. This petition is presented by the petitioner in the court on 16.7.1991 and it was placed in the court for preliminary hearing on 17.7.1991, on which date the matter was adjourned to 22.7.1991. The matter was again placed for preliminary hearing on that date and the same was admitted and interim relief has been granted in favour of the petitioner. Copy of the judgment of the civil court is on the record of this matter filed by the respondents along with his reply. The suit has been decreed on 18.2.1992 i.e. after filing of this petition. It was within the knowledge of the petitioner on the date of the filing of this petition that the respondent has filed a regular civil suit in respect of the very land in the civil court and the petitioner was served with the

summons of this suit much before the filing of this Special Civil Application. This fact of filing of the suit by the respondent in respect of the same land against the petitioner was material fact and which needs to be disclosed by the petitioner. I find sufficient merits in the contention of the learned counsel for the respondents that in case this fact would have disclosed there would have all possibility that the court would not have admitted this petition and grant interim relief in favour of the petitioner. Rejoinder to the reply has not been filed by the petitioner. For want of the rejoinder to the reply the facts stated in the reply stand uncontroverted. It is stated in the reply that the lands in dispute were converted for the nonagricultural purpose. The respondent purchased this land under the Registered sale deed in the year 1981-82. It is stated that these lands were converted into nonagricultural land under the order of the Collector dated 16.4.1950 and subsequent order dated 3.9.1952. It is further stated that the lands fall within the municipal limits of Valsad Municipality, the property tax in respect of the house has been recovered by the municipality from the respondent. These facts are uncontroverted. The land is nonagricultural land and rightly the respondents would have been advised to file the suit and the suit has been filed and the same has been decreed. Where suit has been decreed after filing of this petition, this is an important fact which has to be disclosed by the petitioner before this court. It is not the case of the petitioner that against decree of the civil court in respect of these lands she has filed an appeal and that judgment is reversed or the appeal is pending. It is not the case of the petitioner that she has taken any proceedings for setting aside of the same. In these facts on which there is no dispute, the judgment and decree of the Trial court attained finality, the fact of the filing of the suit by the respondent was a material, relevant and important fact in the matter and it has to be disclosed by the petitioner to this court. It is true that the suit was decreed subsequently but this fact also to be disclosed by the petitioner by additional affidavit. According to my view the fact of pendency of the suit in respect of this very land filed by the respondent against the petitioner was material fact which would have gone against the petitioner if it would have been disclosed in the petition. The fact of decree passed in suit in favour of the respondent was also very relevant and material fact and though the suit was decreed after filing of this petition but it should have disclosed by the petitioner. But for the interim relief granted in this petitioner the respondent could have got

the possession of the suit land in execution of the decree of the civil court. From undisputed facts of this case I am satisfied that this is not a simple and bonafide suppression or suppression through oversight or that fact was not within the knowledge of the petitioner at the time of filing of the petition. The fact of pendency of the suit has been suppressed with a view to get ex-parte interim relief. Such conduct of the petitioner cannot be encouraged and only on this ground this petition deserves to be dismissed. The conduct of the petitioner in the proceedings under Article 226 of the Constitution which is an extraordinary equitable discretionary jurisdiction of this court is very relevant and important consideration which is required to be taken into consideration while granting relief. The petitioner has not come with clean hands before this court and therefore she is not entitled to any discretionary equitable relief from this court in exercise of the powers under Article 226 of the Constitution. For the concealment and suppression of material fact regarding filing of the suit which was within the knowledge of the petitioner this petition deserves to be dismissed.

In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged. Interim relief granted by this court stands vacated. The petitioner is directed to pay Rs.2000/= as costs of this petition to the respondent.

(S.K.Keshote, J.)

*Pvv